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August 2, 2011

VIA ECF

Honorable Arthur D. Spatt
United States District Judge
1024 Federal Plaza
Central Islip, New York 11722

Re: *Taraborelli V MBI*, No. 10-cv-5130-ADS-ETB

Dear Judge Spatt:

Plaintiff is writing in further support of his motion to strike.

Defendant's suggests in its response that its motion is exempt from the individual rules of this court regarding summary judgment motions as its motion was made for dismissal pursuant to Rule 12 and only in the alternative for summary judgment. Defendant's argument can politely be described as *unique*. Of course it was the defendant itself that decided to move in the alternative for summary judgment. No rule required it to do so.

Despite the fact that the motion was made in the alternative it complied with the local rules regarding a Rule 56.1 statement. Obviously, defendant did so as it understands the rules apply even though its motion for summary judgment was made in the alternative. For unknown reasons defendant chose not to comply with the individual rules of this court.

Although it is unclear to this counsel what is meant by the defendant's comments regarding the lateness of plaintiff's response to its motion, it should be noted that the motion to strike was made within the time to respond to the defendant's motion. As the court is aware, based upon the method of service used by defendant, plaintiff had 17 days to respond to the motion. (3 days are added based upon the method of service to the normal 14 day period to respond to the motion) *Rates Tech, Inc v. Mediatrix Telecom, Inc.*, 2008 U.S. Dist. LEXIS 120291 (E.D.N.Y.

2008) The motion was made on July 11, 2011 and plaintiff had through July 28, 2011 in which to respond. Plaintiff's motion to strike was made on July 27, 2011. Based upon the court's individual rules plaintiff expected the court to remove the motion from the docket *sua sponte* and was not aware a motion was required.

Wherefore plaintiff asks that the motion of the defendant be stricken.

Sincerely,

s/Lawrence Katz

Lawrence Katz